



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA- 2013-0124]**

**Qualification of Drivers; Application for Exemptions; Hearing**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces that 51 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant these requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 51 individuals to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA- 2013-0124 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday

through Friday, except Federal Holidays.

- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC

20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA- 21) (Pub. L. 105-178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 C.F.R. part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).<sup>1</sup> Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the Federal Register. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the Federal Register. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory

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<sup>1</sup> This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 C.F.R. 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled “Hearing Disorders and Commercial Motor Vehicle Drivers” prepared for the Federal Highway Administration, FMCSA’s predecessor, in 1993.<sup>2</sup>

### **FMCSA Requests Comments on the Exemption Applications**

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain

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<sup>2</sup> This report is available on the FMCSA web site at [http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport\\_archives.htm](http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm).

types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption before granting any such requests. 49 U.S.C.

### **Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2013-0124” and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final

rule at any time after the close of the comment period.

### **Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2013-0124” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

### **Information on Individual Applicants**

#### Brooks Andresen

Mr. Andresen, 33, holds a driver’s license in Utah.

#### Alexey Belousov

Mr. Belousov, 36, holds a driver’s license in Maryland.

#### Richard Boggs

Mr. Boggs, 36, holds a driver’s license in Ohio.

#### Conley Bowling

Mr. Bowling, 34, holds a driver’s license in Kentucky.

#### Marquarius Boyd

Mr. Boyd, 22, holds a driver’s license in Mississippi.

#### Charles Breidenthal

Mr. Breidenthal, 61, holds a driver’s license in California.

#### Adam Brown

Mr. Brown, 31, holds a driver’s license in Texas.

Kwinton C. Carpenter

Mr. Carpenter, 28, holds a driver's license in Ohio.

Ronald Dillon, Jr.

Mr. Dillon, 48, holds a driver's license in California.

Clark Dobson

Mr. Dobson, 49, holds a driver's license in California.

Louis Dominik

Mr. Dominik, 53, holds a driver's license in Texas.

Kareem M. Douglas

Mr. Douglas, 38, holds a driver's license in Ohio.

Craig Eberhart

Mr. Eberhart, 42, holds a driver's license in Pennsylvania.

Anthony Farinacci

Mr. Farinacci, 49, holds a driver's license in Ohio.

Timothy D. Finley

Mr. Finley, 47, holds a driver's license in California.

Danny E. Fisk

Mr. Fisk, 56, holds a driver's license in Colorado.

Christopher Fitzwater

Mr. Fitzwater, 26, holds a driver's license in Virginia.

Kenneth Frilando

Mr. Frilando, 45, holds a driver's license in New York.

Timothy Gallagher

Mr. Gallagher, 50, holds a driver's license in Pennsylvania.

John R. Harper, Jr.

Mr. Harper, 32, holds a driver's license in Illinois.

Kenneth E. Harris

Mr. Harris, 38, holds a driver's license in Missouri.

Susan D. Helgersen

Ms. Helgersen, 48, holds a driver's license in Wisconsin.

Kimberly Hicks

Ms. Hicks, 46, holds a driver's license in Illinois.

Devon T. Hinds

Mr. Hinds, 55, holds a driver's license in Colorado.

Ryan S. Howard

Mr. Howard, 40, holds a driver's license in New York.

Gregory Ingram

Mr. Ingram, 27, holds a driver's license in North Carolina.

Bernard LaFayette

Mr. LaFayette, 58, holds a driver's license in California.

Christopher Lucki

Mr. Lucki, 31, holds a driver's license in Illinois.

Joshua Matlow

Mr. Matlow, 33, holds a driver's license in Texas.



Kathy Mazique

Ms. Mazique, 30, holds a driver's license in Illinois.

David W. McCoy

Mr. McCoy, 62, holds a driver's license in California.

Clair Mitcham

Ms. Mitcham, 55, holds a driver's license Texas.

Jeffrey S. Moore

Mr. Moore, 34, holds a driver's license in Pennsylvania.

Christopher Morgan

Mr. Morgan, 24, holds a driver's license in Massachusetts.

Quinton Murphy

Mr. Murphy, 31, holds a driver's license in Wisconsin.

William Noble

Mr. Noble, 62, holds a driver's license in New York.

Veniamin Panteleimonov

Mr. Panteleimonov, 33, holds a driver's license in California.

Kelly Pulvermacher

Mr. Pulvermacher, 26, holds a driver's license in Wisconsin.

Jeremy Reams

Mr. Reams, 36, holds a driver's license in Kentucky.

Victor M. Robinson

Mr. Robinson, 30, holds a driver's license in Louisiana.

Darrin A. Rutley

Mr. Rutley, 31, holds a driver's license in New York.

Samuel Sherman

Mr. Sherman, 35, holds a driver's license in Minnesota.

Andrey Shevchenko

Mr. Shevchenko, 21, holds a driver's license in Minnesota.

Ronald K. Smith, Jr.

Mr. Smith, 32, holds a driver's license in Texas.

Willine D. Smith

Ms. Smith, 51, holds a Class B commercial driver's license (CDL) in Florida.

William Templeton

Mr. Templeton, 43, holds a driver's license in Georgia.

Timothy A. Terpak

Mr. Terpak, 27, holds a driver's license in Pennsylvania.

Jeremy L. Thrush

Mr. Thrush, 26, holds a driver's license in Pennsylvania.

Carlos A. Torres

Mr. Torres, 29, holds a driver's license in Florida.

John K. Turner, III

Mr. Turner, 48, holds a driver's license in Colorado.

Chad Weaver

Mr. Weaver, 31, holds a driver's license in Georgia.

## **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 23, 2014.

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Larry W. Minor,  
Associate Administrator for Policy.

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